

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of LAVERNA S. PUGH and DEPARTMENT OF THE AIR FORCE,
SHEPPARD AIR FORCE BASE, TX

*Docket No. 03-2172; Submitted on the Record;
Issued November 18, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that her November 17, 1997 loss of wage-earning capacity determination should be modified.

This case is on appeal before the Board for the fourth time. On December 15, 1995 appellant, then a 64-year-old secretary, sustained a traumatic injury to her left knee when she stumbled down a stairway at work. The Office of Workers' Compensation Programs initially accepted appellant's claim for left knee strain and later expanded the claim to include lateral meniscus tear of the left knee. Appellant returned to work in a light-duty capacity on January 21, 1997 and on May 30, 1997 she accepted a permanent, light-duty position as an office automation clerk, with no decrease in pay. She performed the duties of office automation clerk from June 22 through August 22, 1997, at which time appellant resigned.¹

By decision dated November 17, 1997, the Office determined that the position of office automation clerk, with a weekly salary of \$445.50, fairly and reasonably represented appellant's wage-earning capacity and that she had no loss of wage-earning capacity. Appellant subsequently received a schedule award for a seven percent impairment of her left lower extremity.

On prior appeals the Board has reviewed the Office's wage-earning capacity determination and affirmed the initial determination and subsequent Office decisions denying modification. The Board has also reviewed the merits of appellant's schedule award and found that the evidence supported no more than a seven percent impairment of her left lower extremity. Additionally, the Board has reviewed the Office's handling of appellant's various requests for

¹ On August 29, 1997 appellant underwent arthroscopic surgery to repair the torn meniscus in her left knee. Appellant's orthopedic surgeon, Dr. Stephen D. Ruyle, released her to return to sedentary work on October 27, 1997.

reconsideration.² In response to appellant's most recent prior appeal, the Board, in a decision dated January 31, 2003, set aside the Office's March 20, 2002 decision denying reconsideration and remanded the case for the Office to address appellant's request for modification of the November 17, 1997 wage-earning capacity determination.³

On remand, the Office reviewed appellant's claim on the merits and denied modification by decision dated April 17, 2003. Appellant again requested reconsideration on April 23, 2003. Appellant reported that she had a number of health problems, some of which she attributed to her December 15, 1995 employment injury. She submitted recent medical reports regarding her various conditions, which included cardiac and gastrointestinal problems, a hepatic cyst, lumbar disc disease, mononeuritis multiplex, peripheral vascular disorder and melanoma. Appellant also submitted an April 25, 2003 report from her neurologist, Dr. Danny R. Bartel. In a decision dated July 25, 2003, the Office denied modification of the prior loss of wage-earning capacity determination.

The Board finds that appellant has not met any of the requirements for modification of the Office's November 17, 1997 loss of wage-earning capacity determination.

Once the Office has rendered a determination regarding wage-earning capacity, modification of such a determination is unwarranted unless the party seeking modification demonstrates that the original determination was in fact erroneous, or that there has been a material change in the nature and extent of the injury-related condition, or that the employee has been retrained or otherwise vocationally rehabilitated.⁴ The burden of proof is on the party seeking modification.⁵

Appellant has not submitted any evidence to show that the original November 17, 1997 determination regarding her wage-earning capacity was erroneous. Furthermore, appellant has not alleged nor is there any indication from the record that she has been retrained or otherwise vocationally rehabilitated. Thus, the only remaining avenue for modification is by demonstrating a material change in the nature and extent of appellant's injury-related condition. Appellant, however, has failed in this regard as well.

The majority of evidence appellant submitted in support of her request for modification pertains to various medical conditions that are ostensibly unrelated to appellant's December 15, 1995 employment injury. Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the

² Docket No. 99-1407 (issued July 3, 2000); Docket No. 00-2653 (issued May 10, 2001); Docket No. 02-1154 (issued January 31, 2003).

³ The Board's decisions dated July 3, 2000, May 10, 2001 and January 31, 2003 are incorporated herein by reference.

⁴ *Stanley B. Plotkin*, 51 ECAB 700 (2000).

⁵ *Id.*

condition is causally related to the employment injury.⁶ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁷

While it is apparent from the record that appellant is plagued by numerous medical conditions, the evidence submitted fails to establish a causal relationship between appellant's December 15, 1995 employment injury and her cardiac condition, gastrointestinal problems, her hepatic cyst, lumbar disc disease, mononeuritis multiplex, peripheral vascular disorder and melanoma.⁸ Accordingly, as these various conditions are not accepted as employment related, any current disability associated with these conditions cannot establish a basis for modification of the November 17, 1997 loss of wage-earning capacity determination.

In setting aside the Office's March 20, 2002 decision, the Board noted, *inter alia*, that the Office had not given due consideration to the March 9, 2000 report of Dr. Bartel, a Board-certified neurologist, who reported a history of bilateral knee pain from an on-the-job injury with osteoarthritis and ligamentous instability. He further noted that appellant has spondylosis, spinal stenosis and neurogenic claudication. Dr. Bartel stated that, because of these conditions, appellant was unable to bend, lift, carry, push, pull, squat or stoop on a sustained basis. He concluded that appellant was disabled from all gainful employment.

In an April 25, 2003 report, Dr. Bartel stated that more recent studies showed continued deterioration of appellant's knee, with chondromalacia and extensive tear of the posterior horn of the lateral meniscus.⁹ He also reported that appellant has lumbar disc disease with spinal stenosis and no vascular lesions that would account for her symptoms. Dr. Bartel further reported that appellant continues to have instability of the knees with pain, limited mobility, back pain and bilateral leg weakness with claudication. He stated that appellant was currently unable to bend, lift or carry more than 30 pounds and that she was disabled from all gainful employment. Dr. Bartel additionally stated that this limitation was permanent and that appellant's current situation was a complication of her work injury of 1995.

While Dr. Bartel stated that appellant was disabled from all gainful employment, his March 9, 2000 and April 25, 2003 reports fail to distinguish appellant's disability due to her

⁶ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁷ See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment. *Id.*

⁸ For example, although appellant may believe that she suffered a stroke when she fell down the stairs on December 15, 1995, there is no medical evidence that specifically attributes appellant's current cardiac condition and peripheral vascular disorder to her employment injury.

⁹ A magnetic resonance imaging (MRI) scan of the left knee dated October 16, 2000 revealed an extensive tear of the anterior and posterior horn of the lateral meniscus and a very small focal tear of the posterior horn of the lateral meniscus as well as chondromalacia. An MRI scan of the right knee, also dated October 16, 2000, revealed a rather extensive tear of the posterior horn of the lateral meniscus and chondromalacia.

accepted left knee condition and disability due to her nonemployment-related conditions. Additionally, in his latter report dated April 25, 2003, Dr. Bartel provided no explanation for his statement that appellant's "current situation [was] a complication of her work injury of 1995." He reported that recent studies showed an extensive tear of the posterior horn of the lateral meniscus, but failed to explain how this condition was causally related to the December 15, 1995 employment injury.¹⁰ As Dr. Bartel failed to provide a rationalized medical opinion regarding the extent of any employment-related disability, his most recent reports are insufficient to support modification of the Office's November 17, 1997 loss of wage-earning capacity determination.

The record also includes December 31, 2001 treatment records from Dr. Steven H. Weeden, an orthopedic surgeon with the Texas Hip and Knee Center, who evaluated appellant for complaints of bilateral knee pain. He reported that an MRI scan from 2000 revealed extensive meniscal tears in both knees as well as chondromalacia. Dr. Weeden performed a physical examination and obtained new x-rays. He diagnosed bilateral osteoarthritis of the knees with degenerative meniscal tears and extensive chondromalacia. Dr. Weeden noted a history of an on-the-job injury of the left knee and surmised that appellant was most likely suffering from difficulty with the right side due to overuse and attempts to protect her problems in and about her left side. He indicated that appellant may need total arthroplasty in the future.

Dr. Weeden did not address appellant's ability to work in general or, more specifically, whether her current knee condition precluded her from performing the duties of an automation clerk. Other than noting that appellant had a history of an "on-the-job injury of the left knee," Dr. Weeden did not specifically address whether appellant's current diagnosis of bilateral osteoarthritis of the knees with degenerative meniscal tears and extensive chondromalacia was employment related. For the above-noted reasons, Dr. Weeden's December 31, 2001 treatment records are insufficient to modify the Office's November 17, 1997 loss of wage-earning capacity determination.

Appellant has not met her burden on modification. She has failed to submit any rationalized medical opinion evidence explaining why an employment-related condition prevented her from performing the position of office automation clerk. Accordingly, the Board finds that the Office properly denied modification of its November 17, 1997 determination regarding appellant's wage-earning capacity.¹¹

¹⁰ Further elaboration by Dr. Bartel is particularly necessary given the fact that Dr. Ruyle surgically repaired appellant's left meniscus on August 29, 1997.

¹¹ See *Norman F. Bligh*, 41 ECAB 230, 238 (1989).

The July 25, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 18, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member